IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

CRL.A.No. 408 of 2000()

CC.789/1998 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOCHI

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APPELLANT: COMPLAINANT

M/S.CHANDRIKA TRADERS, AISHWARYA BUILDING
COCHIN COLLEGE ROAD, KOCHI-2
REPRESENTED BY ITS MANAGER, PRAKASH B.RAO
S/O.BABU RAO
12/1580, COCHIN COLLEGE ROAD, KOCHI-2.

BY ADV. SRI.PEEYUS A.KOTTAM
SRI.ASHIK K.MOHAMMED ALI
SRI.NAVEEN THOMAS

RESPONDENTS: ACCUSED NO.1 & 2 AND STATE

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1. J.S.ROAD CARRIERS, 31/2127, KAROLLIL LANE
PONNURUNNY, REPRESENTED BY ITS PROPRIETOR
SMT. JYOTHI SANKARAN, W/O.K.SANKARAN

2. K.SANKARAN, AUTHORISED SIGNATORY
J.S.ROAD CARRIERS, 31/2127, KAROLLIL LANE
PONNURUNNI.

3. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM, KOCHI-31.

BY ADV. SRI.K.P.DANDAPANI (SR.)
BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.408 of 2000

Dated this the 4th day of October, 2007

JUDGMENT

The appellant is the complainant in C.C.No.789/98 who had initiated proceedings under Section 138 of the Negotiable Instruments Act with respect to dishonour of the cheque for Rs.3,00,000/-. The court below acquitted the accused which is challenged herein.

2. The case of the complainant is that the complainant firm had entrusted bulk quantity of coconut oil with the first respondent carrier for transportation to Jyothy Agro Industries, Akola in Maharashtra as per the consignment worth Rs.3,99,272.50 vide invoice dated 15.6.1998. The consignment did not reach the destination allegedly due to misappropriation of the goods by the accused. The accused acknowledged liability as per letter dated 30.7.1998 and issued the impugned cheque which when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent was received but not replied to. No amount was also paid.

3. The evidence adduced in the matter consisted of the testimony of PW1 and Exts. P1 to P8.

4. PW1 who is the Manager of the complainant concern has testified as to the execution of the cheque. He has also proved Exts. P1 to P8, that include the dishonour memo, copy of the lawyer notice, acknowledgment card and extract of the account of the accused. It was brought out in the cross examination that the complainant had filed a complaint before the Mattancherry police and that they did not take any action and directed them to file the complaint and that they were directed to complaint before the Police Station, Irinjalakuda wherein the complainant concern is functioning. It was also suggested that the impugned cheque was given as security about three years back. The above suggestion was also denied. PW1 has also stated in the cross examination that claim was made before the Insurance Company and that on the basis of the letter of the accused that the matter will be settled the Insurance Company did not pay the amount. It was also suggested in the cross examination that two demand drafts for Rs.75,000/- and for

Rs.25,000/- were given and Rs.50,000/- was paid in cash to the complainant. The above suggestions were also denied. It was also suggested that Rs.36,000/- is due to the accused towards freight charges from the complainant. The same was also denied.

5. The court below acquitted the accused on the following grounds that :-

(i) There is no evidence to show that the account of the first accused firm is operated by the first accused (proprietrix) and the second accused jointly and hence that there is no evidence to show that the first accused is drawer of the cheque

(ii) The complainant has not produced documentary evidence to establish the transaction etc. It is pointed out that the accused has contended that the cheque was issued as security about three years back and hence the relevant documents with respect to the transaction ought to have been produced.

(iii) The complainant has failed to prove beyond

reasonable doubt that the amount mentioned in the cheque is due.

6. I find that on the basis of none of the above grounds the case set up by the complainant can be rejected. Once it is established that the accused had executed the cheque and the same has been dishonoured for want of funds in the account of the accused the presumptions under Section 18 and 139 of the Negotiable Instruments Act operate. In the instant case the accused has not even sent a reply notice and to not to speak out non production of any evidence. The counsel has rightly relied on the observations of the Supreme Court in **Hiten P. Dalal vs. Bratindranath Banerjee (2001 Crl.L.J. 4647(SC))**. I find that there is no dispute as to the execution of the cheque. The accused has no specific case as to the context in which the cheque was issued except a vague suggestion that it was issued about three years back towards security. Considering the fact that the accused is a carrier the contention raised that the cheque was issued as security requires convincing evidence. On a perusal of evidence adduced in the matter, I find that the

complainant has proved the execution of the cheque, dishonour of the same for want of funds in the account of the accused and hence the offence under Section 138 of the Negotiable Instruments Act is squarely attracted. The findings of the court below are set aside. The accused are convicted for the offence under Section 138 of the Negotiable Instruments Act. A1, the proprietrix, and A2, the authorised signatory, are sentenced to imprisonment till the rising of the court and to pay a compensation of Rs.1,50,000/- each to the complainant and in default, to undergo simple imprisonment for three months each. The respondents/accused are granted three months' time to remit the amount of compensation. They shall appear before the Judicial First Class Magistrate Court-II, Kochi on 4.1.2008 to receive the sentence.

The criminal appeal is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

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